

STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION

FILED

JUL 27 2001

IN THE MATTER OF THE PETITION OF INDIANA )  
BELL TELEPHONE COMPANY, INCORPORATED, )  
D/B/A AMERITECH INDIANA PURSUANT TO )  
I.C. 8-1-2-61 FOR A THREE PHASE PROCESS FOR )  
COMMISSION REVIEW OF VARIOUS )  
SUBMISSIONS OF AMERITECH INDIANA TO )  
SHOW COMPLIANCE WITH SECTION 271(c) OF )  
THE TELECOMMUNICATIONS ACT OF 1996 )

INDIANA UTILITY REGULATORY COMMISSION

CAUSE NO. 41657

**AMERITECH ADVANCED DATA SERVICES OF INDIANA, INC.**  
**d/b/a SBC ADVANCED SOLUTIONS, INC.'S**  
**VERIFIED MOTION TO STAY IMPLEMENTATION**

Ameritech Advanced Data Services of Indiana, Inc. d/b/a SBC Advanced Solutions, Inc. ("AADS"), by counsel, respectfully requests the Indiana Utility Regulatory Commission ("Commission"), pursuant to 170 IAC 1-1.1-12(a)(5) and -26(a) and Ind. Trial Rule 62, to stay, pending appeal, the implementation of that Order issued by the Commission in this Cause No. 41657 on June 27, 2001 ("Appealed Order"), that provides, in part, "that the scope of the Indiana third-party OSS test should be expanded to include a test of Ameritech's DSL resale offerings consistent with the findings above." *In the Matter of the Petition of Indiana Bell*, Cause No. 41657, Order on EDR-1, page 5 (Ind.U.R.C. June 27, 2001). In support of its Motion, AADS would show the Commission as follows:

1. Concurrently filed herewith, AADS has filed its Petition to Intervene in this Cause pursuant to 170 IAC 1-1.1-11.
2. Today, AADS, Indiana Bell Telephone Company, Inc. d/b/a Ameritech Indiana and Ameritech Interactive Media Services, Inc. timely filed a Joint Notice of Appeal with the Commission of the Appealed Order.

3. The Appealed Order made findings of facts and conclusions of law adversely affecting AADS without including AADS as a party in Cause No. 41657.

4. Because the Appealed Order does not require the payment of money, an appeal bond or irrevocable letter of credit should not be required to stay the implementation of testing of the operations support system ("OSS") used to provision wholesale, interstate DSL Transport offered by AADS to internet service providers ("ISP" or "ISPs").

5. Without the stay of implementation of testing requested herein, AADS will suffer irreparable harm because AADS must (i) restructure its internal organization to the extent that creating an internal operations unit to create, implement and oversee testing of AADS's DSL Transport OSS is required; (ii) create testing programs that are complex, costly and burdensome and that may be rendered moot and unnecessary; (iii) siphon employees currently performing functions to provide wholesale DSL Transport to AADS's customers and assign them to tasks associated with testing; and (iv) delay implementation of its business plan, as explained to the Commission in Cause No. 41660, AADS's CTA cause, to accommodate the testing programs referenced above.

6. The harm suffered by AADS is magnified because AADS was not made a party to and did not participate in the proceedings that culminated in the Appealed Order, and thus, the Commission lacked jurisdiction over AADS, and AADS was denied due process.

7. A stay will not compromise, delay or otherwise adversely affect any other aspects of the OSS test because AADS's DSL Transport OSS can be discretely tested at a later date.

8. The public interest weighs in favor of granting the stay requested herein. Without the stay, AADS would need to maneuver and reassign employees to tasks associated with testing, thus substantially slowing the deployment of DSL Transport in Indiana and increasing the risk of

disruptions in customer service brought about by reduced staff levels attempting to administer the business plan explained by AADS to the Commission.

9. A reasonable likelihood of success on appeal exists because:

- A. The Appealed Order commands AADS to create, implement and oversee testing programs that are complex, costly and burdensome, but AADS was not made a party to and did not participate in the proceedings that culminated in the Appealed Order; and thus, the Commission lacked jurisdiction over AADS, and AADS was denied due process; and
- B. The Commission incorrectly applied federal law in subjecting AADS's provision of wholesale DSL Transport to testing. Federal law would allow inclusion of AADS's wholesale DSL Transport in testing only if AADS's DSL Transport is both a telecommunications service (not an information service) and provided at retail (not at wholesale). AADS's wholesale DSL Transport is provided to ISPs who in turn bundle the DSL Transport with other services such as DSL Internet and e-mail, thus transforming the DSL Transport (a telecommunication product) into the information service provided by ISPs. AADS's provision of DSL Transport to ISPs has been deemed to be wholesale by the Federal Communications Commission (Second Report and Order in CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability (1999)), which determination was recently upheld by a federal Court of Appeals. *Ass'n of Communications Enterprises v. FCC*, -- F.3d --, No. 00-1144 (D.C. Cir. June 26, 2001).

10. AADS believes that it is appropriate for the Commission to stay the implementation of the testing requirements set forth in the Appealed Order pending the resolution of the appeal for the reasons set forth above.

WHEREFORE, Intervenor, Ameritech Advanced Data Services of Indiana, Inc. d/b/a SBC Advanced Solutions, Inc., respectfully requests the Indiana Utility Regulatory Commission stay the implementation of the Commission's Order on EDR-1 in this Cause approved on June 27, 2001 pending the resolution of the appeal taken therefrom and for all other appropriate relief.

Respectfully submitted,

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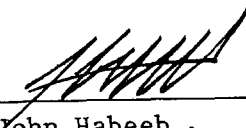
Attorneys for Ameritech Advanced Data Services of  
Indiana, Inc. d/b/a SBC Advanced Solutions, Inc.

**VERIFICATION**

I affirm, under penalties for perjury, that the representations contained in the foregoing Ameritech Advanced Data Services of Indiana, Inc. d/b/a SBC Advanced Solutions, Inc.'s Verified Motion to Stay Implementation are true and correct to the best of my knowledge, information and belief.

AMERITECH ADVANCED DATA SERVICES, OF INDIANA  
INC. d/b/a SBC ADVANCED SOLUTIONS, INC.

By: \_\_\_\_\_

  
\_\_\_\_\_  
John Habeeb, \_\_\_\_\_

Director, Regulatory-Interconnection

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served electronically upon the Ameritech 271 distribution list at [Ameritech271@urc.state.in.us](mailto:Ameritech271@urc.state.in.us) and upon the following counsel of record and other interested persons by United States Mail, first-class postage pre-paid, this 27<sup>th</sup> day of July, 2001.

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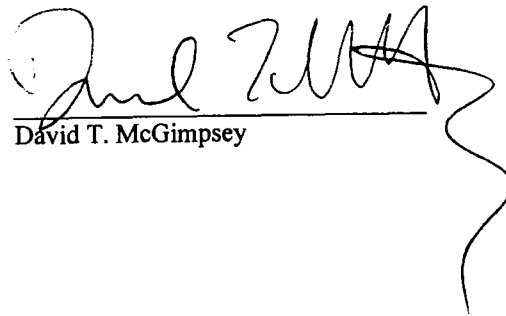
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